

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.678 of 2010**

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Lal Prasad & Sons, through its partner M.C. Lal, S/o- Jagdish Chandra Lal,  
Mohalla and P.S.- Chatauni, District- East Champaran.

... .. Appellant/s

Versus

1. Commissioner of Income Tax, Muzaffarpur
2. Deputy Commissioner of Income-tax, Circle-1, Muzaffarpur

... .. Respondent/s

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**Appearance :**

|                      |   |                                         |
|----------------------|---|-----------------------------------------|
| For the Appellant/s  | : | Mr. Ajay Kumr Rostoji, Advocate         |
| For the Respondent/s | : | Mrs. Archana Sahi, Sr. Standing Counsel |
|                      |   | Mr. Alok Kumar, Advocate                |
|                      |   | Mr. Sanjeev Kumar, Advocate             |
|                      |   | Mrs. Shalini Bihari, Advocate           |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 23-04-2018**

This is assessee's appeal under Section 260A of the Income Tax Act, 1961 calling in question the concurrent orders passed by the Appellate Authority and the Appellate Tribunal. While admitting the appeal on 15.12.2014, the following two questions were formulated for consideration:-

- “1. Whether on the facts and in the circumstances of the case the Tribunal is justified in confirming addition of Rs. 4,36,781/- made on account of undisclosed profit from transportation of petroleum product pursuant



to agreement with HPCL?

2. Whether invocation of section 198 & 199 of the I.T. Act for the purpose of confirming addition of Rs. 4,36,781/- is legal and valid on the facts and in the circumstances of the appellant's case?"

Facts in a nut-shell go to show that the assessee was awarded a contract by the Hindustan Petroleum Corporation Limited for transportation of its petroleum product. In the execution of the contract, from the payments to be made to the assessee firm, tax at source was deducted by HPCL. It is not in dispute that the TDS certificate was issued in the name of the assessee firm and not in the name of the so-called owner of the truck Sri M.C. Lal. It is also an admitted position that payments with regard to execution of the work was received by the assessee firm and it is the assessee firm which claimed the benefit of tax deducted at source. In spite of all the aforesaid, the firm did not show the receipts out of the contract in its account as a result, the entire receipts have been added on the account of the appellant assessee. It is the case of the assessee that the trucks were owned by Sri M.C. Lal, the assessee firm has entered into a contract with Sri M.C. Lal and as Sri M.C. Lal



was the direct transporter to HPCL for various period, the assessee was allowed to use the transportation contract with HPCL and it was M.C. Lal who was owner of the tanker and the entire income has been transferred to Sri M.C. Lal.

Contending that the Tribunal in interpreting the provisions of Section 198 and 199 has committed an error and the income could not be added to the assessee's firm, this appeal has been filed.

Sri Rastogi took us through the provisions of Sections 198 and 199 and argued that the finding recorded by the Tribunal to say that both Sections 198 and 199 go together in the matter of deduction of tax and deriving of income is not correct. Both the Sections have different connotation and, therefore, in interpreting the provisions the learned Tribunal, it is said, has misconstrued itself.

We have heard learned counsel for the parties at length and we find that in Paragraph 8 the learned Tribunal has discussed the issue in the following manner:-

“8. In this connection, provisions of section 198 and 199 are relevant. According to section 198 all sums deducted in accordance with Chapter XVII shall, for the purpose of computing income of the assessee, be deemed to be the income received. Thus tax deducted at source would be deemed to be



income of the assessee. Section 199 provides that any deduction made in accordance with the provisions of Chapter XVII and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income deduction was made. Deduction of tax at source by HPCL would therefore be treated as payment of tax on behalf of the assessee from whose income deduction was made. In other words, amount of tax deducted at source as well as income from which deduction is made will travel together. They cannot move in different directions and towards different destinations. TDS being part of the income out of which it is deducted cannot be divorced from such income. Part (i.e. TDS) must move with the whole (i.e., income out of which it is deducted). It is not possible to treat the tax deducted at source as the income of the assessee and the income out of which such tax were deducted at source as income of somebody else. The tax deducted at source comes out of income and therefore is part of the said income. Both of them must go together in the hands of same person. Since the amount has been paid by HPCL to the assessee and the assessee has received that amount, its subsequent application is of no consequence. Both the Assessing Officer and the ld. CIT (A) have given cogent reasons for taxing the impugned sum in the hands of the assessee.”

Once the tax were deducted at source and the



assessee received the benefit of deduction and when the contract was between HPCL and the assessee and the entire payments were made in favour of the assessee, in adding the income in the name of the assessee, in our considered view, no error has been committed.

Accordingly, we answer the questions by holding that in the peculiar facts and circumstances of this case and on the basis of the material available on record particularly, the contract entered into between the assessee firm and HPCL, the Tribunal is justified in confirming the addition of Rs. 436781/- on account of undisclosed profit derived from transportation of petroleum product and in invoking the provisions of Sections 198 and 199 for the said purpose no error has been committed which warrants consideration.

The appeal is, therefore, dismissed.

**(Rajendra Menon, CJ)**

**(Rajeev Ranjan Prasad, J)**

P.K.P./-

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